

Course Syllabus for Federal Appellate Procedure and Advocacy

I. Class 1: Federal Judging

a. Appellate Rules

Fed. R. App. P. and Local Rules of the Second Circuit *Must be Read.*

b. Perspectives

Sarah M.R. Cravens, *Involved Appellate Judging*, 88 Marq. L. Rev. 251 (2004)

Harry T. Edwards, *The Role of a Judge in Modern Society: Some Reflections on Current Practice in Federal Appellate Adjudication*, 32 Clev. St. L. Rev. 385 (1983-1984)

Rick Sims, *What Appellate Judges Do*, 7 J. App. Prac. & Process 193 (2005)

Patricia Wald, *Some Real-Life Observations about Judging*, 26 Ind. L. Rev. 173 (1992)

c. Case Study: *Croll v. Croll*

Croll v. Croll, 229 F.3d 133 (2d Cir. 2000)

Gonzalez v. Gutierrez, 311 F.3d 942, 954 (9th Cir. 2002)

Fawcett v. McRoberts, 326 F.3d 491, 500 (4th Cir. 2003)

Furnes v. Reeves, 362 F.3d 702, 719 (11th Cir. 2004)

Sonderup v. Tondelli & Another 2001 (1) SA 1171 (CC) at 1182-83 (S. Afr.)

In re P (A Child) [2004] EWCA Civ. Div. 971, [2005] Fam. 293 (CA (Civ. Div.)) (U.K.)

II. Class 2: Effective Advocacy

a. Brief Writing

Herald Price Fahringer, *The Art of Brief Writing*, N.Y. App. Prac. & Proc.

Andrew L. Frey & Roy T. Englert, Jr., *How to Write a Good Appellate Brief*, ABA Litig. Mag., Winter 1994, available at <http://www.appellate.net/articles/gdaplbrf799.asp>

James W. McElhaney, *Twelve Ways to a Bad Brief: Following Instincts May Hurt a Submission to the Court*, ABA J., Dec. 1996, at 74

William Strunk, Jr. & E.B. White, *The Elements of Style* (Allyn & Bacon 2000) (1959) *Must Read*

Joseph F. Weis, Jr., *The Art of Writing a Really Bad Brief*, 43 Fed. Law, Oct. 1996, at 39.

b. Oral Argument

Joseph F. Anderson, Jr., *Setting Yourself Apart from the Herd: A Judge's Thoughts on Successful Courtroom Advocacy*, 50 S.C. L. Rev. 617 (1999)

Wilfred Feinberg, *Unique Customs and Practices of the Second Circuit*, 14 Hofstra L. Rev. 297 (1986) *Must Be Read*.

Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C. L. Rev. 567 (1999) *Must be Read*

Harold K. Gordon, *Career Development: Preparing for Oral Argument*, N.Y. L.J., Sept. 30, 2005, available at <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1127984710422>

Stephen A. McEwen, *Barrister's Tips: Preparing Yourself for Oral Argument*, Los Angeles Lawyer, June 2002, at 8, available at <http://www.lacba.org/Files/LAL/Vol25No4/1156.pdf>

John G. Roberts, Jr., *Thoughts on Presenting an Effective Oral Argument*, School in Law Review 7-1 (1997), available at <http://www.nsba.org/site/docs/36400/36316.pdf>

III. Class 3: Jurisdiction

a. Final Orders

28 U.S.C. § 1291

b. Interlocutory Appeals

i. Civil

Fed. R. Civ. P. 54(b)

28 U.S.C. § 1292(a)

Able v. United States, 44 F.3d 128 (2d Cir. 1995)

Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999)

Fed. R. App. P. 5(b)

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)

Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978) *Must be read*

Flanagan v. United States, 465 US. 259 (1984)

Cunningham v. Hamilton County, 527 U.S. 198 (1999)

Behrens v. Pellatier, 516 U.S. 299 (1996)

Johnson v. Jones, 515 U.S. 304 (1995)

Smith v. Edwards, 175 F.3d 99 (2d Cir. 1999)

ii. Criminal

Abney v. United States, 431 US. 651 (1977)

Stack v. Boyle, 342 U.S. 1 (1951)

United States v. Gold, 790 F.2d 235 (2d Cir. 1986)

United States v. Aliotta, 199 F.3d 78 (2d Cir. 1999)

iii. Government Appeals

18 U.S.C. § 3731

iv. Double Jeopardy

United States v. Lynch, 181 F.3d 330 (2d Cir. 1999)

United States v. Wilson, 420 U.S. 332 (1975)

c. Sentencing Appeals

18 U.S.C. § 3742

d. Mandamus and Prohibition Petitions

28 U.S.C. § 1651(a)

Beacon Theaters, Inc. v. Westover, 359 U.S. 500 (1959)

La Buy v. Howes Leather Co., 352 U.S. 249 (1957)

e. Supreme Court Guidance on Claim Preclusion vs. Jurisdictional Limitations

Eberhart v. United States, 126 S. Ct. 403 (2005) *Must be Read*

Day v. McDonough, 126 S. Ct. 1675 (2006) *Must be Read*

Arbaugh v. Y & H Corp., 126 S. Ct. 1235 (2006)

Kontrick v. Ryan, 540 U.S. 443 (2004)

IV. Classes 4 and 5: Standards of Review

a. Congressional Action

Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254(d)

b. Judicial Discretion

Henry J. Friendly, *Indiscretion about Discretion*, 31 Emory L.J. 747 (1982) *Must be Read*

Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 Syracuse L. Rev. 635 (1971) *Must be Read*

c. Case Law

Pierce v. Underwood, 487 U.S. 552 (1988)

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990)

Kotteakos v. United States, 328 U.S. 750 (1946)

O'Neal v. McAninch, 115 S. Ct. 992 (1995)

Arizona v. Fulminante, 499 U.S. 279 (1991)

Sullivan v. Louisiana, 508 U.S. 275 (1993)

Neder v. United States, 527 U.S. 1 (1999) *Must be Read*

Brechit v. Abrahamson, 507 U.S. 619 (1993)

United States v. Agurs, 427 U.S. 97 (1976)

United States v. Olano, 507 U.S. 725 (1993) *Must Be Read*

Johnson v. United States, 520 U.S. 461 (1997)

United States v. Jackson, 196 F.3d 383 (2d Cir. 1999)

Apprendi v. New Jersey, 530 U.S. 466 (2000) *Must be Read*

United States v. Promise, 255 F.3d 150 (4th Cir. 2001)

United States v. Cotton, 535 U.S. 625 (2002)

Blakely v. Washington, 542 U.S. 296 (2004)

United States v. Booker,(2005) *Must Be Read*

United States v. Crosby, 397 F.3d 103 (2d Cir. 2005) *Must Be Read*

Williams v. Taylor, 529 U.S. 362 (2000)

Matteo v. Superintendent, 171 F.3d 877 (3d Cir. 1999)

Francis S. v Stone, 221 F.3d 100 (2d Cir. 2000)